



MEMORANDUM

TO: William B. Horne, II, City Manager

FROM: Micah Maxwell, Assistant City Manager *mm*
Jennifer Poirrier, Human Resources Director *JP*

CC: Owen Kohler, Assistant City Attorney

DATE: November 22, 2019

RE: Parks and Recreation Audit Report #2019-04

On 11/15/2019 you asked us to review Audit Report #2019-04 to determine necessity and intensity of any disciplinary action based on the finding of that report

The following constitutes the written decision concluded based upon the following materials;

- Clearwater City Auditor Report #2019-04
- Clearwater Code of Ordinances
- Clearwater City Charter
- Minutes, agenda, and video from Clearwater Worksession dated April 16, 2015
- Minutes, agenda, and video from Clearwater Councilmeeting dated April 19, 2015
- Minutes, agenda, and video from Clearwater Worksession dated March 13, 2017
- Minutes, agenda, and video from Clearwater Councilmeeting dated March 16, 2017
- City Purchasing Policy
- City PBMP
- Council Policies
- Cash Collection Policy in effect June 2, 2018

Background: As reflected in Audit Report #2019-04, a review from the City Auditor resulted in eight findings related to the actions and operations of the Clearwater Parks and Recreation Department's June 2, 2018 John Fogerty/ZZ-Top concert. The report found that as it related to this concert, the Parks and Recreation department:

1. Inappropriately bound City in contractual agreement(s) prior to City Council's consent and legal review and approval for appropriateness
2. Lacked contract management and did not comply with contract provisions – Overpaid on co-sponsored agreement
3. Lacked a reliable and accurate reporting system to track receipts and expenditures of special events
4. Lacked or had inadequate supporting documents

5. Had poor or lacked oversight of special events' activities
6. Did not comply with established Ordinances and policies and procedures
7. Lacked proper segregation of duties
8. Inadequately safeguarded city funds and other receipts for deposit

Review of Audit Findings

In reviewing the audit findings to identify if any disciplinary action is warranted, I have focused on three subject areas. The Exercise of Authority, Administrative Duties, and Organizational Structure. I have then identified relevant information related to each subject area, identified infractions that occurred, and identified the accountable party for each infraction.

1. Exercise of Authority

a. Background

- i. Department requested and received authority from Council to approve contracts that were in line with an approved template with the caveat that changes to the construct of the contract could come back to Council (April 19, 2015 Council meeting).
 1. Authority was delegated to City Manager who then delegated to Parks and Recreation Director, who was responsible for sign off on those contracts.
 2. The contract in question included an addendum, which was not a part of the contract which Council authorized the City Manager and subsequently the Parks and Recreation Director to use as a template. These changes were not reviewed by Council or Legal.
 3. Further changes were made to the construct of the contract by the Special Events Manager in the form of changes to a contract addendum. These changes were not reviewed by Council or Legal.
- ii. City Code of Ordinance section 2.561 governs purchases over \$50,000. Of note within this section are:
 1. Section 2.561(5) of the Code of Ordinances provides that contracts over \$100,000 are to be awarded by City Council.
 - a. The contract in question included a city commitment of \$100,000 and was executed April 23, 2018 but not brought before council for approval until May 17, 2018.
 2. Section 2.561(8)(a) allows for a contract increase by the city manager of up to ten percent over the last commission approved amount. Approvals over and above ten percent would require further council action.
 - a. Removing cost liability from a partner that was contractually bound to that liability is an increase to the contractual obligation of the city. This increase

exceeded the amounts allowed by 2.561(8)(a), thus the increase should have been considered by City Council.

- iii. Council Policy 2-21 provides a process for the waiver of fees and city services by City Council which requires requests to be considered in the March prior to the fiscal year that the event will take place.

- 1. In March 16, 2017, Council approved its list of waived special event fees and city services. This list included an item entitled "Concert Series in Coachman Park" at an amount of \$25,000.
- 2. Approvals over and above the amount approved by City Council are required to come back to City Council for consideration.
- 3. The concert in question exceeded the waiver of fees and charges for city services, without coming back to City Council for approval.

b. Infraction(s)

- i. Approval/Amendment of contract alternative to council approved form – Council Action from 4/19/2015
- ii. Approval of contract without Legal approval – City Charter 4.02(b)
- iii. Commitment of city funds over \$100,000 – Code of Ordinances 2.561(5)
- iv. Increase in cost of contract over 10% of council approved amount. – 2.561(8)(a)
- v. Waiver of special event fees and city services over and above City Council approved amount.
- vi. Failure to follow policies, procedures, laws, and ordinances – PBMP, Personal Responsibility Standards.

c. Accountability

- i. The Parks and Recreation Director was the employee authorized to approve special events contracts under the council approved template and the ultimate purchasing approver within the department. Infractions 1-4 are the direct responsibility of the Parks and Recreation Director.
- ii. While purchasing approval is ultimately the responsibility of the Parks and Recreation Director, the Special Events Manager is responsible for and is expected to account for items that fall under his purview. In this case, the waived fees and city services. Thus responsibility for infraction v is shared between the Parks and Recreation Director and the Special Events Manager, but weighted toward the Special Events Manager.

2. Administrative Duties

a. Background

i. Cash Handling

- 1. The cash collection policy in place at the time of this event has been updated. Review for infractions was done using that policy in place at the time.

2. The cash collection policy states that cash collections must be deposited or brought to Finance within 24 hours.
 - b. Infraction(s)
 1. Per finding #4 of the audit, those deposits were not made within the timeframe defined in the policy, nor was Finance made aware of a delay.
 - c. Accountability
 - i. The Special Events Manager is expected to know and follow and ensure that his employees know and follow city policy related to cash collection. Thus, failure to deposit the items within the time defined by the Cash Collection policy is responsibility of the Special Events Manager.
3. Organizational Structure
 - a. Background
 - i. The Audit report identified several areas where improvement to the structure of the Special Events Division and Parks and Recreation department as a whole were needed.
 1. Department level structural improvements began after the 2018 employee theft investigation.
 2. Division level structural improvements began during the audit process.
 - b. Infraction(s)
 - a. Failure to proactively create systems and structures which appropriately mitigate risk to city resources. – Personal Responsibility Standards, We will exercise due care and be efficient managers of public funds, equipment, facilities, lands, and other resources.
 - c. Accountability
 - i. Director, Deputy Director, and Special Events Manager are equally responsible for infraction.

Conclusion

Director Kevin Dunbar

It is expected that each member of the senior management team constantly work to improve the systems and structures within their control. The audit report shows a lapse in the oversight of those systems and structures within a division directly reporting to Mr. Dunbar. Mr. Dunbar failed to uphold this expectation by not identifying and amending practices that create an unacceptable level of liability.

It is expected that each member of the senior management team will ensure that purchasing within their department is done appropriately and that council actions falling within their purview will be followed. Mr. Dunbar failed to uphold this expectation by allowing for waived fees and charges for city services to increase over the amount allowed by Council of \$25,000.

It is expected that when a department requests Council approval to operate outside of the normal set of rules, that they will honor the limits of that approval. Mr. Dunbar failed to uphold this expectation by approving a contract that was not consistent with the one Council authorized staff to use.

It is expected that each contract that the city has entered into has been approved by the City's legal department. Mr. Dunbar failed to uphold this expectation by approving a contract which included changes that had not been reviewed or approved by the legal department.

It is expected that individuals who are delegated purchasing authority by the City Manager will operate within the rules promulgated by the purchasing ordinance, policies, and processes. Mr. Dunbar failed to uphold this expectation by committing the city to expenditures over the amount delegated to him and then increasing the city's financial liability by choosing not to charge Ruth Eckerd Hall the for expenditures agreed upon by contract.

Recommendation: Considering the above infractions and the prior letters of admonishment, it is our belief that the appropriate level of discipline for Mr. Dunbar is termination.

Deputy Director Art Kader

It is expected that each member of the senior management team constantly work to improve the systems and structures within their control. The audit report shows a lapse in the oversight of those systems and structures, and while Deputy Director Kader did not oversee the Special Events Division, he does oversee the administrative functions of the Parks and Recreation department. Mr. Kader failed to uphold this expectation by not identifying and amending practices that create an unacceptable level of liability.

Recommendation: Considering the above infraction, we recommend that Mr. Kader receive coaching and counseling to be provided by the City Manager's Office.

Special Events Manager Kris Koch

It is expected that each member of the senior management team constantly work to improve the systems and structures within their control. The audit report shows a lapse in the oversight of those systems and structures directly under the supervision of Mr. Koch. Mr. Koch failed to uphold this expectation by not identifying and amending practices that create an unacceptable level of liability.

It is expected that each member of the senior management team properly manage the programs under their area of responsibility. Mr. Koch failed to properly manage the Council approved Special Events Fee amounts when he allowed for the amount of waived fees and charges for city services to exceed \$25,000 and failed to ensure that the Cash Collection policy was followed.

Recommendation: Considering the above infractions we recommend Mr. Koch receive a one-day suspension and coaching and counseling to be provided by the City Manager's Office.